

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

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|----------------------------------|---|---------------------------------|
| Angela Thompson, |) | Civil Action No.: 9:13-3570-BHH |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | <u>OPINION AND ORDER</u> |
| |) | |
| Carolyn W. Colvin, |) | |
| Commissioner of Social Security, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

This matter is before the Court for review of the Report and Recommendation of United States Magistrate Judge Bristow Marchant (ECF No. 38), which recommends granting Plaintiff's motion for attorneys fees under 42 U.S.C. § 406(b)(1)¹ (ECF No. 32) in the amount of \$43,221.40. On November 3, 2016, the Commissioner filed "Defendant's Notice of Not Filing Objections to the Report and Recommendation of the Magistrate Judge." (ECF No. 40.)

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to him with instructions. 28 U.S.C. § 636(b)(1). In the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must "only satisfy itself that

¹ Plaintiff's motion for attorneys fees (ECF No. 32) was referred to Judge Bristow Marchant on September 23, 2016. Since the parties did not consent to this matter being decided by a Magistrate Judge, Judge Marchant prepared a Report and Recommendation.

there is no clear error on the face of the record in order to accept the recommendation.”
Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The Court has carefully reviewed the record and concurs in the recommendation of the Magistrate Judge. The Court adopts the Report and Recommendation and incorporates it herein by reference. Therefore, it is hereby **ORDERED** that the Plaintiff’s counsel’s motion for \$43,221.50 in attorney’s fees pursuant to § 406(b) (ECF No. 32) is **GRANTED**. Also, counsel shall remit to Plaintiff the \$6,661.10 in fees previously awarded to Plaintiff pursuant to the Equal Access to Justice Act (“EAJA”). See *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) (noting that fees may be awarded under both § 406(b) and EAJA but that the claimant’s attorney must refund to the claimant the amount of the smaller fee) (internal quotations and citation omitted).

IT IS SO ORDERED.

/s/ Bruce Howe Hendricks
United States District Judge

November 7, 2016
Greenville, South Carolina